

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMEL WILLIAM DALLUGE,

Plaintiff,

vs.

TEDDY CHOW, FRANK DETROLIO,
GRANT COUNTY JAIL, et al.,

Defendants.

NO. CV-10-0050-LRS

ORDER DISMISSING COMPLAINT
PURSUANT TO 28 U.S.C. §1915

BEFORE THE COURT is Defendants Frank Detrolio, Grant County Jail, and Grant County Commissioners #1, #2, and #3's Motion to Dismiss Pursuant to the Prisoner Litigation Reform Act, Ct. Rec. 10, filed May 14, 2010 and noted without oral argument for July 6, 2010. Defendant Chow joined in Co-Defendants' Motion for PLRA (Ct. Rec. 25) on June 25, 2010.

I. INTRODUCTION

Plaintiff, a prisoner currently housed at Clallam Bay Correction Center, a state prison located in Clallam County, Washington, is proceeding pro se. Plaintiff filed his Complaint in state court on December 4, 2009. Defendants were served by mail pursuant to a state court order (Ct. Rec. 1). This case was removed from Grant County Superior Court on March 1, 2010 by defendants. Defendants Frank

1 Detrollo, Grant County, Grant County Commissioners 1-3, and Grant
2 County Jail have filed an answer to Plaintiff's Complaint (Ct. Rec. 4)
3 and demand for a jury. This is plaintiff's third lawsuit against
4 Grant County in the last four years and plaintiff's previous lawsuits
5 resulted in defense verdicts. (Declaration of Patrick R. Moberg, ¶ 7).

6 Defendants, the moving parties, ask the court to review
7 plaintiff's complaint under 28 U.S.C. §1915 and dismiss any portions
8 that are frivolous or malicious, fail to state a claim upon which
9 relief can be granted, or seek monetary relief from a defendant who is
10 immune from such relief.

11 **II. Defendants' Motion to Dismiss (Ct. Rec. 10)**

12 Defendants argue that under the Prisoner Litigation Reform Act
13 ("PLRA"), federal courts are required to screen complaints brought by
14 prisoners seeking relief against a governmental entity or officer or
15 employee of a governmental entity. 28 U.S.C. § 1915A(a). Federal
16 courts must dismiss complaints that are legally "frivolous or
17 malicious," that fail to state a claim upon which relief can be
18 granted, or that seek monetary relief from a defendant who is immune
19 from such relief or brought against persons with immunity from suit.
20 28 U.S.C. §§1915A(b)(1), (2) and 1915(e)(2); see *Barren v. Harrington*,
21 152 F.3d 1193 (9th Cir. 1998). Dismissal from the court may come at
22 any time during the proceedings. 28 U.S.C. § 1915A(e)(2).

23 Although not abundantly clear, it appears plaintiff makes three
24 claims against all defendants: wrongful or malicious prosecution, a
25 Monell civil rights claim for failure to train and/or supervise, and
26 wrongful imprisonment.
27

1 **A. Statute of Limitations**

2 Defendants assert that Plaintiff's entire complaint must be
3 dismissed as all of his claims are barred by the statute of
4 limitations. Both his state and civil rights claims are subject to a
5 three-year statute of limitations. Defendants argue it is plain that
6 plaintiff's claims for events that occurred in 2004 are time barred by
7 the applicable three year statute of limitations.

8 **1. Civil Rights Claim**

9 Plaintiff alleges that Defendant Grant County failed to
10 train/supervise or act in establishing policy or procedures to prevent
11 abuses of authority causing constitutional violations. Complaint,
12 ¶12. "[T]he appropriate statute of limitations in a § 1983 action is
13 the three-year limitation of Wash. Rev. Code §4.16.080(2)." Bagley v.
14 CMC Real Estate Corp., 923 F. 2d 758, 760 (9th Cir. 1991). The
15 statute of limitations "begins to run upon incarceration
16 notwithstanding the pendency of further state court proceedings." Id.
17 at 761.

18 **2. Malicious Prosecution and Related Claims**

19 Plaintiff establishes in his complaint the subject charges were
20 filed against him on February 25, 2004. A claim for malicious
21 prosecution (abuse of process) must be brought within three years from
22 the time the allegedly tortious transaction or occurrence is
23 committed. RCW 4.16.080(2); Nave v. City of Seattle, 68 Wn.2d 721,
24 724, 415 P.2d 93 (1966). Defendants argue that clearly, plaintiff did
25 not sue within three years from February 25, 2004 when the charges
26 were filed against him. Defendants move to dismiss these claims.

3. Wrongful Imprisonment and Related Claims

Defendants state that Grant County Jail released plaintiff into state custody on March 25, 2004, which would have been the moment of the alleged tortious action for wrongful imprisonment, i.e. Defendants' alleged failure to credit time spent in Grant County Jail against his state prison sentence. Defendants assert that plaintiff did not file this lawsuit by March 25, 2007, which was three years from his release into state custody. Even if plaintiff were to argue the tortious act did not occur until he was released from state prison (as that date would include the time of his alleged wrongful imprisonment), plaintiff needed to bring his lawsuit by September 17, 2007,¹ which he did not.

B. Prosecutorial Immunity Against Civil Rights Claim

Apart from being barred by the statute of limitations, plaintiff's lawsuit has an immunity problem Defendants argue. Plaintiff's Complaint alleges liability of Defendant Chow arising out of charges brought against plaintiff in 2004. (Ct. Rec. 1-2 at 2.) Plaintiff specifically alleges in his Complaint that the charges in question were not later re-filed, after plaintiff had served some unspecified DOC sentence, which confines the claimed harm to 2004 with respect to Defendant Chow. (Ct. Rec. 1-2, at 6.) Plaintiff alleges actions by Defendant Chow only in his capacity as a prosecutor.

The prosecutor is protected by immunity when filing criminal charges against a person. A state prosecuting attorney who acts within the scope of his duties in initiating and pursuing a criminal

¹The state released plaintiff on September 17, 2004.

1 prosecution and in presenting the state's case is absolutely immune
2 from a suit for damages under 42 U.S.C.A. § 1983. *Imbler v. Pachtman*,
3 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976); *Kalina v.*
4 *Fletcher*, 522 U.S. 118, 118 S. Ct. 502(1997) (A prosecutor's activities
5 in connection with the preparation and filing of charging documents,
6 including an information and motion for an arrest warrant, were
7 protected by absolute prosecutorial immunity in a § 1983 action
8 brought by the accused after the charges were dropped.)

9 Similarly, Defendants argue, any claims against Defendant County
10 or its three commissioners arising from the failure to train the
11 prosecutor should also be barred by immunity.

12 **C. Failure to Exhaust Administrative Remedies**

13 Defendants argue that there is no evidence plaintiff exhausted
14 the available administrative remedies within Grant County Jail or the
15 department of Corrections as required under the PLRA.

16 **D. Failure to Comply with RCW 4.96**

17 Defendants argue that plaintiff also did not comply with RCW
18 4.96.020(3) requiring him to file a claim for damages before filing
19 this lawsuit. This requirement is applicable to any state claim
20 included in plaintiff's complaint.

21 **III. Defendant Chow's Joinder** (Ct. Rec. 25)

22 Defendant Chow argues, as a prosecutor, he is entitled to
23 absolute prosecutorial immunity. Prosecutorial immunity applies to
24 civil rights claims. *Imbler v. Pachtman*, 424 U.S. 409, 427-428, 47 L.
25 Ed. 2d 128, 96 S. Ct. 984 (1976). Defendant Chow argues that the
26 activities plaintiff alleges Defendant Chow participated in are
27

1 protected from liability under a prosecutor's absolute immunity. Van
2 de Kamp v. Goldstein, ___ U.S. ___, 129 S. Ct. 855, 861, 172 L. Ed. 2d
3 706 (2009).

4 Additionally, Defendant Chow notes, plaintiff did not comply with
5 either RCW 4.92.100 or 4.96.020(3), which requires the filing of a
6 claim for damages before filing a lawsuit. This requirement is
7 applicable to and forecloses any state law claim included in
8 plaintiff's Complaint. Defendant Chow joins in the other defendants'
9 arguments in support of their motion to dismiss.

10 **IV. ANALYSIS**

11 Under the PLRA, plaintiff's Complaint should be dismissed if it
12 is "frivolous or malicious," fails to state a claim upon which relief
13 can be granted, or seeks monetary relief from a defendant who is
14 immune from such relief. 28 U.S.C. §§1915A(b)(1), (2) and 1915(e)(2);
15 see Barren v. Harrington, 152 F.3d 1193 (9th Cir. 1998). The present
16 action with respect to all defendants fails under the applicable PLRA
17 standards, and should be dismissed with prejudice.

18 When addressing a pro se complaint, generally a district court
19 "should not dismiss without granting leave to amend at least once when
20 a liberal reading of the complaint gives any indication that a valid
21 claim might be stated." Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d
22 Cir.2000) [internal quotation and citation omitted]; see also
23 Fed.R.Civ.P. 15(a) (leave to amend "shall be freely given when justice
24 so requires"). An opportunity to amend is not required where "the
25 problem with [plaintiffs'] causes of action is substantive" such that
26 "[b]etter pleading will not cure it." Cuoco, 222 F.3d at 112 (finding
27

1 that repleading would be futile) [citation omitted]; see also Cortec
2 Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 48 (2d Cir.1991) ("Of
3 course, where a plaintiff is unable to allege any fact sufficient to
4 support its claim, a complaint should be dismissed with prejudice.")
5 (affirming, in part, dismissal of claim with prejudice) [citation
6 omitted].

7 The Court finds, as discussed above, that plaintiff's complaint
8 must be dismissed for statute of limitations bars, immunity issues,
9 and failure to state any claims for which relief may be granted.

10 **V. CONCLUSION**

11 Plaintiff was a prisoner at the time of allegations in his
12 complaint. Plaintiff originally filed this lawsuit in state court,
13 and defendants removed the lawsuit to federal court as it included
14 several federal claims. Because plaintiff is a prisoner, his complaint
15 is reviewed under the PLRA, and any frivolous or legally meritless
16 claims should be dismissed. Plaintiff's claims are dismissed under
17 the PRLA for the foregoing reasons. Accordingly,

18 **IT IS ORDERED:**

19 1. Defendants' Motion to Dismiss Pursuant to the PLRA, **Ct. Rec.**
20 **10**, is **GRANTED**. Plaintiff's Complaint is **DISMISSED with prejudice** and
21 without opportunity to amend.

22 2. Plaintiff's Motion for Summary Judgment and Sanctions, **Ct.**
23 **Rec. 13**, is **DENIED as MOOT**.

24 3. Plaintiff's Motion to Expedite, **Ct. Rec. 17**, is **DENIED**.

25 4. Plaintiff's Motion to Strike Defendants' Motion to Dismiss,
26 and Sanctions. **Ct. Rec. 18**, is **DENIED**.

